

## REMARKS

In the Office Action issued on January 7, 2009, the Examiner:

- acknowledged the filing of a Request for Continued Examination;
- Entered the After Final Amendment filed on September 18, 2008;
- rejected claim 8 under the judicially created doctrine of obviousness-type double patenting over Claims 1 through 29 of copending Application Serial No. 10/828,716;
- rejected Claim 8 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 4,994,077 to Dobben ("Dobben");
- rejected Claim 8 under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,299,637 to Shaolian ("Shaolian"); and
- rejected Claim 8 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 6,287,334 to Moll ("Moll").

The Applicants have fully considered the January 7, 2009 Office Action and cited references and submit this Reply and Amendment in response to the Examiner's rejections. Reconsideration of the application for patent is requested.

### Initial matter – attorney not of record acting in representative capacity

As an initial matter, please note that the undersigned attorney is not of record and is currently acting in a representative capacity pursuant to 37 C.F.R. §1.34 (See M.P.E.P. §405).

### Initial matter – Interview Summary

The Applicants thank the Examiner for the telephone interview conducted

on April 15, 2009. While no agreement with respect to the claims was reached, the Examiner's thoughts and suggestions regarding proposed claim amendments is considered helpful and is the basis for the amendments made herein.

#### Provisional rejection of claims for double patenting over copending applications

The Examiner rejected all pending claims for obviousness-type double patenting over Claims 1 through 29 of copending Application Serial No. 10/828,716.

In consideration of other rejections raised in the subject Office action, the Applicants have herein amended independent Claim 8. Thus, all claims currently under consideration have been amended.

Applicants respectfully assert that the remaining claim defines subject matter that is patentably distinct from the subject matter defined by the listed claims of the cited copending application. Accordingly, reconsideration of the provisional double patenting rejection is requested.

#### Rejection of claims under 35 U.S.C. §102(b) - Dobben

The Examiner rejected Claim 8 under 35 U.S.C. §102(b) as being anticipated by Dobben.

Dobben fails as an anticipatory reference at least because it fails to disclose a valve orifice cooperatively defined by two or more leaflets, which is expressly required by Claim 8. The reference cannot, therefore, properly serve as a basis for rejection under 35 U.S.C. §102.

Applicants respectfully assert that this rejection of the claims has been overcome and request its withdrawal.

#### Rejection of claims under 35 U.S.C. §102(e) - Shaolian

The Examiner rejected Claim 8 under 35 U.S.C. §102(e) as being anticipated by Shaolian.

Shaolian fails as an anticipatory reference at least because it fails to disclose "frame elements around which the first and second outer edges of the two or more leaflets are wrapped to allow the first and second outer edges of each of the two or more leaflets to non-circumferentially engage a wall of the vascular vessel." Indeed, the leaflet assembly of Shaolian has no contact with the vessel wall because such contact is blocked by the outer frame. Furthermore, if such contact were not blocked, the Shaolian device would not function as intended because the leaflet assembly would not be able to rotate within the outer frame. This would destroy the valving function of the device.

As a result of this failure, Shaolian cannot properly serve as a basis for rejection under 35 U.S.C. §102.

Applicants respectfully assert that this rejection of the claims has been overcome and request its withdrawal.

#### Rejection of claims under 35 U.S.C. §102(b) - Moll

The Examiner rejected Claim 8 under 35 U.S.C. §102(b) as being anticipated by Moll.

The Applicants have herein amended Claim 8 to require that the support frame and centering support element comprise first and second serpentine sections with specific relative positioning of the bends defined thereby. These amendments are fully supported by the application as filed; no new matter has been introduced. Exemplary support is found in Figure 84 and paragraph [0144].

Moll does not disclose such relative positioning as required by amended Claim 8 and, therefore, cannot properly serve as a basis for rejection under 35

U.S.C. §102.

Applicants respectfully assert that this rejection of the claims has been overcome and request its withdrawal.

## **CONCLUSION**

The Applicants have fully responded to the rejections listed by the Examiner in the January 7, 2009 Office Action. The Applicants respectfully assert that the remaining independent claim currently under consideration defines patentable subject matter and that a Notice of Allowability is appropriate.

Should the Examiner have any questions regarding this Reply and Amendment, or the remarks contained herein, the undersigned attorney would welcome the opportunity to discuss such matters with the Examiner.

Respectfully submitted,

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